

EXHIBIT I

1 Galligan - People - Direct

126

2 THE COURT: All right, Miss Freund.

3 MS. FREUND: Thank you.

4 DIRECT EXAMINATION

5 BY MS. FREUND:

6 Q Detective Galligan, good afternoon.

7 A Good afternoon.

8 Q I'm going to direct your attention to June 28th,
9 1984, 48th Precinct, at approximately two o'clock in the
10 afternoon and I'm going to ask you, Detective, if you conducted
11 a lineup at approximately that time?

12 A Yes, I did.

13 Q I'm going to ask you to look at that which has
14 been deemed marked as People's Exhibit 5. Deemed marked
15 People's 5 for identification of the hearing and ask you
16 if you recognize that?

17 A Yes, I do.

18 Q Can you please tell us what that is?

19 A It is a copy of the lineup sheet regarding the
20 lineup that was conducted by myself on June 28th.

21 Q And that lineup, is that the lineup viewed by a
22 Miss [REDACTED]

23 A Yes, it was.

24 Q Detective what I would like you to do is tell us
25 to the best of your recollection all the facts of that lineup.

1 Galligan - People - Direct

127

2 Tell us what you remember about it, please.

3 THE COURT: First looking at that the picture
4 on P-5, is that a fair and accurate representation
5 of how the lineup appeared to somebody who would
6 be looking through the viewing mirror?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: All right. You may respond to
9 to the question.

10 Q Detective where were you during the course of this
11 lineup?

12 A I was inside the lineup room with fillers and suspect.

13 Q Please tell us what if anything that you remember
14 occurring during this lineup?

15 A All right. Detective Newbert knocked on the glass,
16 two-way mirror to indicate she was ready to view the lineup.
17 I made sure all the fillers were sitting correctly and holding
18 the numbers properly. I responded by knocking back on the
19 glass at which time I could hear the curtain rise.

20 THE COURT: Where was the defendant seated
21 at that time?

22 THE WITNESS: Position number five, Your Honor.

23 THE COURT: How was he seated in position
24 number five?

25 THE WITNESS: Pardon me?

1 Galligan - People - Direct

128

2 THE COURT: How did it come that he was seated
3 in position number five?

4 THE WITNESS: He chose the position to be
5 seated in. He had his choice of what position
6 he wanted to be seated.

7 THE COURT: What did you say to him?

8 THE WITNESS: I said pick any chair you want
9 to sit in and sit in.

10 THE COURT: And he chose number five?

11 THE WITNESS: That's correct.

12 THE COURT: All right.

13 Q You then lifted the shade?

14 A Detective Newbert lifted the shade.

15 Q I see. You both made corresponding signals?

16 A That's correct. The complainant viewed the lineup.
17 She shade was pulled back down again. At that time Detective
18 Newbert came to the door of the viewing room and told me
19 that the complainant wanted to hear everybody in the room
20 speak. There was a certain statement required I believe
21 something to the effect about cutting me, the word bitch
22 was in it. I'm going to cut you bitch or something to that
23 effect and at which time I had each individual from number
24 one to six one at a time say that statement.

25 THE COURT: I will fix you so you don't identify

1 Galligan - People - Direct

129

2 as you bitch. Does that refresh your recollection?

3 THE WITNESS: Yes.

4 THE COURT: That was the line?

5 THE WITNESS: That was the line.

6 Q All right and you asked each one in turn to make
7 that statement?

8 A Make that statement each one responded.

9 MS. FREUND: One minute.

10 THE COURT: We'll wait for the Boston Shuttle
11 to pass.

12 MS. FREUND: Thank you.

13 Q Detective, please continue.

14 A Each one responded at a time. Detective Newbert
15 came back again and said the complainant could not hear well.

16 MR. SEGAL: I'm sorry I can't hear.

17 THE COURT: Newbert said the complainant could
18 not hear well?

19 THE WITNESS: Could not hear well at which
20 time I had each one again from position number
21 one through six one at a time walk up to the viewing
22 window and repeat the statement. Detective Newbert
23 came back a third time and said the complainant
24 still says she could not hear all of them, at which
25 time the complainant was placed outside the doorway

Galligan - People - Direct

130

of the viewing room and each individual was walked up to the door and requested to repeat the same statement for a third time which each one did.

THE COURT: They were inside the lineup room when they said it?

THE WITNESS: Yes, sir. All three times in
the lineup room. Yes. Your Honor.

THE COURT: Talking about the third time now.

THE WITNESS: Yes, sir. Still in the viewing
room.

Q Was the door to the lineup room open?

THE WITNESS: No, it was closed. Your Honor

THE COURT: At the door, nobody on the other side of that door could see who was saving anything?

THE WITNESS: No, Your Honor, no one could see it.

THE COURT: Did you send them up in the same order?

THE WITNESS: Same order, one through six.

MS. FREUND: No further questions.

MR. SEGAL: Is it fair to assume, Judge, that I'm only limited to what the direct was?

THE COURT: You are permitted to go into anything that relates to the Wade Hearing, bearing

1 Galligan - People - Gross

131

2 in mind however under the rules of evidence you
3 go beyond what was elicited on direct examination
4 you make the witness your own.

5 MR. SEGAL: Objection.

6 CROSS EXAMINATION

7 BY MR. SEGAL:

8 Q Detective Galligan, you were inside the viewing
9 room; is that correct?

10 A Yes, sir.

11 Q And anybody else --

12 THE COURT: Wait a minute. In the viewing
13 room or lineup room?

14 THE WITNESS: Lineup room.

15 Q Anybody else in there besides you?

16 A Yes.

17 THE COURT: And the six people.

18 Q And the six people.

19 A There was a police officer with me also.

20 Q Who was that?

21 A Police Officer O'Toole.

22 Q Where were you positioned?

23 A We were both in the corner of the room opposite
24 the window to the right of the window as you would be facing
25 the fillers and the defendant.

Galligan - People - Cross

132

2 Q If you're looking -- if the six over there?

3 A Right where you're standing right now. The window
4 would be here right by the doorway so no one can get in or
5 out of the room.

6 Q Could the person who was looking in see you and
7 and O'Toole?

8 A No, sir.

9 Q Mr. Newton you say was asked to pick a seat?

10 A That is correct.

11 Q And you say he picked number five?

12 A That's correct.

13 Q And he was told to pick number five?

14 A No, he was not.

15 Q After he picked number five there comes a point
16 where Detective Newbert knocks on the glass to tell you she's
17 ready?

18 A That's correct.

19 Q And prior to her doing that did you see Miss Gonzalez
20 -- withdrawn. Did not -- Miss [REDACTED], did you see Miss
21 [REDACTED] come into the precinct?

22 A No, I did not.

23 Q Did you at any time have any conversation with
24 her before the viewing of the lineup?

25 A No, I did not.

1 Galligan - People - Cross

133

2 Q Do you know if O'Toole did?

3 A Not to my knowledge.

4 Q You say that the shade goes up and there's a viewing;
5 is that right?

6 A (Witness nodding head.)

7 Q How long after the shade goes up does the shade
8 get pulled down?

9 A When the person viewing makes an identification.
10 or says I can't identify.

11 Q How long was it a minute, two minutes, three minutes,
12 what?

13 A Short period of time. I don't recollect. Couple
14 of minutes, two, three minutes.

15 Q Two, three minutes. And how do you know the shade
16 is pulled down?

17 A You could hear the shade pulled down and also get
18 a response back like a tap.

19 Q You could hear it go up and hear it go down?

20 A That's correct.

21 Q During the period that individual was viewing,
22 when the shade was up and before it is pulled down do any
23 of the six people in the room say anything?

24 A No. That is the reason why somebody is in there
25 to keep them from saying anything or moving around.

1 Galligan - People - Cross

134

2 Q Are any of the six people asked to stand up and
3 walk up to the mirror?4 THE COURT: Talking about this specific
5 instance or are you talking about in general?6 Q No, talking about this incident, this instance
7 here at that lineup after the shade goes up and --8 THE COURT: Shade went up, everybody remained
9 seated?

10 THE WITNESS: Yes.

11 THE COURT: The shade went down?

12 THE WITNESS: That's correct.

13 THE COURT: And then Detective Newbert knocked
14 on the door and gave you additional instructions?

15 THE WITNESS: Yes, Your Honor.

16 Q Prior to that getting the additional instructions
17 or any of those six men or were they, in other words, when
18 the shade goes up was number one told to stand up and turn
19 to the left, turn to the right or just stand, walk up to
20 the mirror or anything like that?

21 A No. Nothing like that.

22 Q He wasn't?

23 A No.

24 Q Was number two or three, four, five and six told
25 to do it?

Galligan - People - Cross

135

2 A No.

3 MS. FREUND: Objection.

4 THE COURT: Overruled.

5 A None of them was told to do it.

6 Q Nobody was told to do that?

7 A That's correct.

8 Q And no one did it?

9 A And no one did it.

10 Q The shade is pulled down. At that point do you
11 know if an identification is made, yes or no?

12 A Do I know. I don't know. No knowledge.

13 Q Newbert knocks on the door and gives you instruc-
14 tions for something?

15 A That's correct.

16 Q And Newbert tells you that an identification is
17 made?18 A Does she, no. Evidently she didn't otherwise she
19 wouldn't go through the second part of it.20 Q So Newbert says, gives you instructions; is that
21 correct?

22 A That's correct.

23 Q And the instructions were what?

24 A She wanted each one to say that statement.

25 Q About the --

Galligan - People - Cross

136

A Cutting you, bitch. Whatever it is.

3 Q You say in your opinion an identification wasn't
4 made because she wanted these statements?

5 MS. FREUND: Objection.

THE COURT: Sustained.

At that point she did not tell you that anybody had been identified; did she?

THE WITNESS: She did not tell me.

Q She made the statement. How do you and O'Toole decide to have it done?

A Everything is done -- is done in numerical order

Q Everything is done one through six?

A Correct

Q Is the shade pulled up when the voice is yelled out, when the statement is yelled out the shade goes up?

A Shade was up when the statements were made. That's correct.

Q So it is a knock and shade goes up second time now?

A Same way when everything is set

Q Just asking you. There's a knock. The shade goes up?

A (Witness nodding head.)

Q And assume somebody else, number one goes ahead.

1 Galligan - People - Cross

137

2 is that correct?

3 A That's correct.

4 Q Is number one sitting or standing when he does
5 it?

6 A Number one was sitting, they all were sitting when
7 they did it the first time.

8 Q Each one is told to say something?

9 A That's correct.

10 Q Were they told in what way to say it?

11 A They were all instructed at one time what to say.

12 Q I know that, sir. What I'm asking you what voice
13 were they told to say it in?

14 A First time just to say, make the statement.

15 THE COURT: Wait a minute. How many times
16 do they say this statement, three times?

17 THE WITNESS: Three times, Your Honor.

18 THE COURT: Once they were seated?

19 THE WITNESS: Correct.

20 THE COURT: Second time they walked up individually to the window?

22 THE WITNESS: That's correct.

23 THE COURT: And the third time spoke through
24 the door?

25 THE WITNESS: That's correct, Your Honor.

1 Galligan - People - Cross

138

2 Q First time when they're told to say are they told
3 to say in different voice, a loud voice?

4 A It wasn't specified first time, second time. Third
5 time it was.

6 Q First each one is just told to make that statement?

7 A That's correct.

8 Q One, two, three, four, five and six are told?

9 A That's correct.

10 Q After the statement is made by number six is the
11 shade pulled down?

12 A That's correct.

13 Q How soon after the shade is pulled down does Newbert
14 come back to the door?

15 MS. FREUND: Objection.

16 THE COURT: Overruled.

17 A A minute.

18 Q Okay, and does Newbert say anything to you?

19 A She said she could not hear them all.

20 Q She said -- Newbert couldn't hear?

21 A The complainant. Newbert said the complainant
22 could not hear them all.

23 Q Could not hear them all. Did she say which ones?

24 A She didn't specify.

25 Q Now, does Newbert say to you, have him do it again

1 Galligan - People - Cross

139

2 or do you say have them do it again?

3 A I said to her I'll bring them up to the window.

4 Q You said at this time I'll bring them to the window.

5 What did Newbert say?

6 A She says all right. She goes back in the viewing
7 room.

8 Q Newbert -- you and O'Toole are still in the viewing
9 room?

10 A That's correct.

11 Q Prior to having each man walk up to the window
12 do you explain to them what they were to do?

13 A Yes. I do explain to them.

14 Q When Newbert is talking to you are you and her
15 at the doorway or are you in one room then another?

16 MS. FREUND: Objection at which point?

17 Q When Newbert says come back and says I want it
18 repeated the second time they didn't say it loud; is that
19 correct?

20 A That's correct.

21 Q Where do you and her have the conversation in the
22 lineup room or outside of the lineup room or what?

23 A I believe my head was outside the lineup door speak-
24 ing to her while she was standing in the hall.

25 Q You and Newbert was in the hall?

1 Galligan - People - Cross

140

2 THE COURT: Let me if I understand this.
3 Is there a door that connects the lineup room to
4 the viewing room?

5 THE WITNESS: No, Your Honor. One is right
6 behind the other one.

7 THE COURT: If you wanted to speak to somebody
8 in the lineup room you would have to go to the
9 lineup room?

10 THE WITNESS: To the second door.

11 THE COURT: And there's a hallway there?

12 THE WITNESS: Yes.

13 Q Person who is viewing it can they see you and Newbert?

14 A No, they cannot.

15 Q So Newbert and you have -- Newbert and you have
16 that conversation. You return the lineup room and you explain
17 to the six people in the room what is to take place next?

18 A Yes.

19 Q That is where you, correct me if I'm wrong. Each
20 man is told to walk up to the mirror when you tell them to
21 and to make that statement again?

22 A That's correct.

23 Q And they're told what type of voice to make it
24 in?

25 A I told them to make it louder.

1 Galligan - People - Cross

141

2 Q To say louder. You didn't say how much louder?

3 A No. I said louder.

4 Q There's a knock and the shade goes up, sir; Is
5 that right?

6 A I respond first and then the shade goes up.

7 Q You respond and the shade goes up?

8 A That's correct.

9 Q Knock knock, shade?

10 A Yes.

11 Q Number one is told to walk up and make the statement?

12 A Right.

13 Q And then is number one told to do anything else?

14 A No. He returns to his seat.

15 Q And the same procedure is all the way through the
16 lineup?

17 A That's correct.

18 THE COURT: Slow down one minute.

19 Q Does the shade go back down? Does the shade remain
20 up until all six have spoken?

21 A The shade remained up.

22 Q So number one would come up, repeat the statement,
23 turn around and walk back and number two would walk up until
24 all six have completed the task?

25 A That's correct.

1 Galligan - People - Cross

142

2 Q So all six completed it with the shade up?

3 A That's correct.

4 Q Is it fair to say the first time the shade was
5 up the whole time also when each one said it sitting down?

6 A Yes.

7 Q And after the sixth has said it, walked up and
8 made the statement does then shade go down then?

9 A Yes, sir.

10 Q And is that when Newbert knocked on the door again?

11 Q A That's correct.

12 Q By the way when each man went up to the mirror
13 how close did they stand to the mirror?

14 A Five, six inches away.

15 Q Five, six inches?

16 A Yes.

17 Q And were they told to move their mouths in any
18 way or show their teeth in any way or move to the side, to
19 the left or right or anything like that?

20 A No, sir.

21 Q They were just told to walk and look straight up
22 into the mirror, sir?

23 A They are told to walk up to the mirror and repeat
24 this. They weren't actually told to stand any particular
25 way.

1 Galligan - People - Cross

143

2 Q Or move their mouth in any way?

3 A No, sir.

4 Q Were they ever told to show their teeth in any
5 way?

6 A No, sir.

7 Q After the sixth one does the shade go down; is
8 that correct?

9 A Yes.

10 Q How much time passes before Newbert reappears?

11 A Another minute or two.

12 Q And the same procedure you stuck you head out?

13 A That's correct.

14 Q And what is the conversation at that point?

15 A Conversation again she could not hear everybody.

16 Q She said she could not hear everybody?

17 A That's correct.

18 Q Did Newbert say which ones she could not hear?

19 A I don't recall.

20 Q Did Newbert say have number three come up again
21 and number six and number five come up again?

22 A No. She did not.

23 Q Is that the extent of the conversation or is there
24 more?

25 A There was more.

1 Galligan - People - Cross

144

2 Q What is it?

3 A I suggested that I bring them up to the door rather
4 than talk through the door, rather than a cinder block wall.
5 There is a cinder block wall.

6 THE COURT: You told Newbert to bring the
7 complainant, the complaining witness out into the
8 hallway?

9 THE WITNESS: That's correct.

10 Q How far is the complaining witness from where
11 each man is told to walk up?

12 THE COURT: If you know.

13 A Standing right behind the door.

14 THE COURT: Did you see the complaining witness
15 stand?

16 THE WITNESS: No, I did not.

17 Q You don't know -- you know each of the six persons
18 in the lineup going up to the door but you don't know where
19 the complaining witness was?

20 A On the outside door. I don't know.

21 Q Could the complaining witness see inside the room
22 when the door was opened?

23 A The door was not opened when she was standing out-
24 side the door.

25 Q In other words the door is closed?

1 Galligan - People - Cross

145

2 A That's correct.

3 Q And each man is told just stand at the door?

4 A And repeat the statement.

5 Q And repeat the statement?

6 A That's correct.

7 a Q And again it is done in numerical order, one, two,
8 three, four, five, six?

9 A That's correct.

10 Q And are they told to say it in any specific way,
11 in other words, loud, you know louder than the first times?

12 A That's correct, sir.

13 Q And each man then has to say it loud enough to
14 go through the door?

15 A That's correct.

16 Q After that is completed what happens next?

17 A Detective Newbert and the complainant evidently
18 went into --

19 THE COURT: Don't say evidently. You have
20 to tell us to the best of your recollection.

21 THE WITNESS: To the best of my recollection.

22 Q Sorry, can I do it this way -- I withdraw that.

23 After the last man has come up to the door, okay, do
24 you leave the room?

25 A No. I do not leave the room.

Galligan - People - Cross

146

Q Does Newbert enter the room?

A Newbert enters the room.

Q Does she enter with anybody or by herself?

A By herself.

Q Do you and her have a conversation?

A She said there was an identification made.

Q She said there was an identification?

A Yes.

Q And did she say of who the identification was made?

A Yes.

Q Who did she say?

A She said subject sitting in number five.

Q What happens at that point, sir?

A At that point the subject is removed and placed
into the cell, into the Task Force.

Q Do you say anything to number five?

A I don't recall if I said anything. Sometimes I
might. Sometimes I might not.Q At any time during the three viewings -- there
are three viewings; am I correct?

A That's correct.

Q Or was it four? There was a first.

A There was a viewing, three voices.

Q So, say four. Did Detective Newbert comes into

1 Galligan - People - Cross

147

2 the room to speak to any of the six people during that four
3 times?

4 MS. FREUND: Objection. When?

5 Q During the four times?

6 THE COURT: If you understand the question.

7 THE WITNESS: Yes, I do, Your Honor. To my
8 knowledge I don't recall her coming in.

9 Q Detective Newbert says an identification is made
10 of number five; right?

11 A That is correct.

12 Q Do you say to number five you're under arrest?

13 A I might. I might have not. I don't recall.

14 Q Is number five told that he is picked out and under
15 arrest by somebody in the room?

16 A Yes, he is told he is picked out.

17 Q And you're in the room, O'Toole is in the room
18 and Newbert is in the room?

19 A At that time I believe just myself and O'Toole.

20 Q And Newbert?

21 A And Newbert came into the room.

22 Q Now, Newbert comes into the room and says an identi-
23 fication has been made?

24 A That's correct.

25 Q Is number five or words to that effect?

1 Galligan - People - Cross

143

2 A That's correct.

3 Q Everybody is still in the room?

4 A That's correct.

5 Q One of you, I don't know who it is, if you remember
6 says something to number five; is that right?

7 A That's correct.

8 Q And do you remember the words that are said?

9 A I don't remember the words. Usually you have been identi-
10 fied.11 Q Whatever the words are said to number five what
12 happens at that point?13 A At that point number five whoever the suspect may
14 be is removed from that room and placed into the cell in
15 the Task Force office.16 Q Does number five say anything when he is told he
17 is being removed?

18 A In that particular lineup?

19 Q Yes, that person?

20 A I don't recall him saying anything.

21 Q Does number five say anything as he is -- the person
22 who is removed from the room whatever number it may be is
23 that person saying anything as they're going from the cell?24 MS. FREUND: Objection as to what the other
25 person --

1 Galligan - People - Cross

149

2 Q Whoever is taken?

3 THE COURT: It is your recollection that number
4 five was told he was identified?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: You don't recall who told him?

7 THE WITNESS: I don't know.

8 THE COURT: When number five is told he is
9 identified do you recall him saying anything at
10 that point?

11 THE WITNESS: No, Your Honor.

12 Q Does he say anything at any point as he is being
13 taken to the cell, holding cell?

14 A Not to my knowledge.

15 Q Does he say anything in the holding cell?

16 A At a later date there was a lot of noise coming
17 from the holding cell.

18 Q That was after the complainant had left the precinct?

19 A Had left the precinct -- no, she was still in the
20 precinct.

21 Q She was still in the precinct?

22 A Yes.

23 Q When she's in the precinct what does the person
24 who is put in the cell say?

25 THE COURT: It is number five.

1 Galligan - People - Gross

150

2 A Number five, there was yelling and carrying on,
3 just yelling and screaming.

4 Q How far was the complaining witness from number
5 five at that point?

6 MS. FREUND: Objection.

7 THE COURT: If you know.

8 A I would say roughly fifty to sixty feet.

9 Q And were you present with the complaining witness
10 when number five's voice could be heard?

11 A I was in the same room. That's correct.

12 Q And does the complaining witness say anything at
13 that point?

14 A Yes.

15 Q What does she say?

16 A She said that's him. That's the voice. That's
17 him.

18 Q That is what she said?

19 A Yes.

20 Q Anything else she says?

21 A No. She was very nervous and trembling.

22 A And at any time do you remember number five during
23 the four times, one viewing and voices ever being singled
24 out to do anything that the other ones where not told to do?

25 A No, sir.

1 Galligan - People - Cross

151

2 Q At any time?

3 A At any time.

4 Q Do you remember any of the men in there being singled
5 out to do anything different from anybody else?

6 A No.

7 Q Not at all?

8 A No.

9 Q When number five was taken out of this lineup room
10 Go the cell do you know where the complainant, the complaining
11 witness was, Miss [REDACTED]?

12 A I have no knowledge where she was.

13 Q You don't know where she was?

14 A No.

15 MR. SEGAL: Nothing further.

16 THE COURT: Any redirect?

17 MS. FREUND: No.

18 THE COURT: Detective, you are excused.

19 (Witness is excused.)

20 THE COURT: Call your next witness.

21 MS. FREUND: No other witnesses. I ask for
22 a recess until tomorrow.

23 THE COURT: All right. It is five to five.

24 MR. SEGAL: Can we approach for a second?

25 THE COURT: Come inside for a moment. Do

EXHIBIT J

1 O'Toole - Defense - Direct

253

2 Q Do you remember which lineup that was?

3 A It was the lineup that was viewed by Miss [REDACTED]

4 Q Do you know who Miss [REDACTED] then?

5 A Yes.

6 THE COURT: Do you recall the date?

7 THE WITNESS: It was on the 20th of June, 1984.

8 Q There was a lineup prior to that but you had nothing
9 to do with that?

10 A I was in the office at the time.

11 Q Okay, and in order for that lineup that you viewed
12 -- withdraw that.

13 Did you conduct that lineup.?

14 A No, I was in the actual room with the fillers.

15 Q Can you tell us what happened in the room?

16 A It was Detective Galligan was in the room, myself.
17 This is prior to the witness actually coming from the other
18 side of the precinct. Detective Newbert was also in there and
19 they asked Mr. Newton what seat he wanted to sit in. He
20 choose seat number five. He sat down and each filler was given
21 a card with a number on it one through six and they recorded
22 the names of which each filler which position they were in for
23 the lineup.

24 THE COURT: They would record the name?

25 THE WITNESS: The name.

1 O'Toole - Defense - Direct 254

2 THE COURT: The name?

3 THE WITNESS: The name.

4 THE COURT: One of the fillers was David Doe
5 but that wasn't his real name?

6 THE WITNESS: The name he supplied us with.
7 We don't put down.

8 THE COURT: You put down a name. I don't mind
9 David Doe but, Oscar Goldman?

10 THE WITNESS: That is his real name. That is
11 what he goes by.

12 THE COURT: You don't pay him by check; do you?

13 THE WITNESS: No.

14 Q After you took a name what happens next?

15 A Detective Galligan instructed them that basically
16 did the instruction for your client, although the fillers were
17 used they're used there on numerous cases. They know their's
18 a knock, what happened was instructed for me what to do, how
19 to know hold the numbers, took photographs of them. Detective
20 Newbert left and went to get the complaining witness.

21 Q Then what happened?

22 A There was -- there's a knock on the glass.

23 Q Yes.

24 A And make sure everyone is holding the number
25 correctly and looking at there's a little cross like above the

1 O'Toole - Defense - Direct

255

2 window, everybody looks at that. You knock back and the shade
3 went up.4 Q The shade is on which side, your side or the other
5 side?

6 A The shade is on the other side.

7 Q You hear the shade go up?

8 A If you're standing right next to there by the door
9 where she is so we can't be in view of the person viewing the
10 lineup can hear the shade going up.11 THE COURT: Where they filler are they would
12 see the shade go up?13 THE WITNESS: They wouldn't even know when the
14 shade goes up. The other room is dark so that no
15 one can see into the other room at all.16 THE COURT: They wouldn't know when the shade
17 went up?18 THE WITNESS: If they look at the glass it is
19 a mirror, like a mirror, like a mirror reflection.
20 They wouldn't see it.21 THE COURT: The point I'm trying to make nobody
22 who was inside the lineup room would know how long
23 the shade went up; is that correct?

24 THE WITNESS: That's correct.

25 THE COURT: They couldn't tell how long it took

1 O'Toole - Defense - Direct

256

2 to make an identification?

3 THE WITNESS: That's correct, yes.

4 Q There's a knock after the knock that is when the
5 shade goes up; is that correct?

6 THE COURT: Or nearly?

7 THE WITNESS: Yes.

8 THE COURT: Do you remember if this particular
9 case after the shade went right up after the double
10 knock?

11 THE WITNESS: I don't know if it went right up.
12 When the lineup is on we never know when the shade
13 came back down.

14 THE COURT: Two knocks and you heard the shade
15 go up?

16 THE WITNESS: Yes, I was leaning against the
17 wall.

18 Q How long after the shade goes up does Newbert come
19 to the door?

20 A Maybe at the most a minute as I recall.

21 Q And then what happened?

22 A She talked with Detective Galligan then he told the
23 fillers they were going to each say a statement. I don't
24 recall what the statement was. I remember there was a couple
25 of curse words in the statement and the fillers thought it was

1 O'Toole - Defense - Direct

257

2 a big joke. They could say this and one by one each filler
3 said whatever the statement was.

4 THE COURT: While they were seated?

5 THE WITNESS: While they were seated one,
6 starting with the number one.,

7 Q Did each filler go up after that?

8 MS. FREUND: Objection.

9 THE COURT: Each filler repeat that sentence
10 while he was seated?

11 THE WITNESS: Yes.

12 THE COURT: One through six?

13 THE WITNESS: Right, one, two, three, four,
14 five and six.

15 Q Do you know of your own knowledge whether the shade
16 was up at that time?

17 A My own knowledge I don't know.

18 Q You assumed the shade was up?

19 A I can't assume. If they were looking for a voice
20 identification the shade might have been down.

21 Q And the voice carrying into the other room?

22 A Yes.

23 Q Well, that is what developed to be the problem.

24 Wait a minute. We'll get to the problem, if there
25 was a problem. We're at the point now where one through six

1 O'Toole - Defense - Direct

258

2 repeats this one sentence?

3 A Yes.

4 Q Which do you remember it had the word "bitch" in
5 it?

6 A Yes.

7 Q What if anything happened after that?

8 A Detective Newbert came back to the door.

9 Q About how long after number six said the statement
10 did Newbert come in?

11 A Five, ten seconds. You could hear the door open
12 on the other side and she knocked on the door where we were.

13 Q Did you hear what was said?

14 A No I was on the other side. Detective Galligan
15 was talking to her. I didn't exactly hear what she said.

16 Q You don't know?

17 A I knew later on. I couldn't hear what the people
18 were saying.

19 Q How did you know that?

20 A Because Detective Galligan said she can't hear.

21 We have to speak up.

22 THE COURT: What if anything did Galligan
23 say after Galligan spoken to Newbert?

24 THE WITNESS: He told the filler we're going
25 to do it again. This time you're going to get

1 O'Toole - Defense - Direct

259

2 out of your chair walk up to the glass about three,
3 four feet from the glass and you're going to say
4 the statement again.

5 Q Was that done?

6 A Yes, sir.

7 Q Was that done?

8 A Yes.

9 Q Can you tell us in the voice, whether men what
10 voice to use? Was it supposed to be a deep voice or high
11 voice or loud voice or soft voice anything like that?

12 A They were just told to repeat they was said. They
13 weren't told to scream or softly, just told to repeat exactly
14 in their normal talk voice.

15 Q Were they in any way told to face the mirror in
16 a certain way, sideways anything like that or anything like
17 that?

18 A Everybody was just told, you know, walk to -- there
19 was a spot, whatever the line was along the floor there's
20 tile told to walk up and say this statement.

21 THE COURT: That line or spot is about two,
22 three feet from the mirror?

23 THE WITNESS: Yes.

24 THE COURT: Each one did that from one to
25 six?

1 O'Toole - Defense - Direct

260

2 THE WITNESS: From one to six, yes.

3 THE COURT: What if anything happened after
4 that?5 THE WITNESS: Then after number six Detective
6 Newbert came back again and said this time I heard
7 her say she can't hear and with that we had done
8 it in other lineups before where we tried to get
9 a voice identification where we had the person
10 walk to the door and have the victim stand on
11 the side of the door so that way there was no
12 way the voice couldn't travel through the wall.13 THE COURT: What happened after that, Newbert
14 came back and said she still can't hear?15 THE WITNESS: We told them again just to do the
16 same sentence again by the door.17 THE COURT: And each one was seated at that
18 time?

19 THE WITNESS: Well, we had them come up.

20 THE COURT: Before that?

21 THE WITNESS: They were all back seated.

22 THE COURT: After they first walked up to
23 the viewing mirror they all went back to their
24 seats?

25 THE WITNESS: That's correct.

1 O'Toole - Defense - Direct

261

2 THE COURT: Is it your testimony each one
3 walked to the door?

4 THE WITNESS: Yes, one at a time starting
5 again number one. They each walked to the door
6 and they said the statement again.

7 THE COURT: And repeated the statement?

8 THE WITNESS: Yes.

9 Q Was the door opened or closed?

10 A The door really can't close all the way. There's
11 no way for anyone to see out. There's a crack in the door.

12 Q Do you know where the other party was on the other
13 side?

14 A The door opens, opens out. I will explain it
15 to you. The door opens out. We were on this side. She
16 was on this side of the door.

17 Q Opposite side?

18 A The opposite side of the door, not looking in
19 the crack or anything, on the other side of the door so
20 there's no way she could see into there.

21 Q Do you know whether she could see in or could
22 not see in at the time?

23 A She couldn't see into the room.

24 Q You're sure of that?

25 A Yes.

1 O'Toole - Defense - Direct

262

2 Q Each man walked up to the crack at the door?

3 A One at a time.

4 Q And said that same answer?

5 A Yes.

6 Q In a normal voice?

7 A (No response.)

8 THE COURT: Then returned to the seat and
9 number two went up and made the statement and
10 returned to the seat?

11 THE WITNESS: Yes.

12 THE COURT: And after number six what if
13 anything happened then?14 THE WITNESS: That is when Detective Newbert
15 came back and there was a time lapse there maybe
16 a minute or two and Detective Newbert came into
17 the viewing room.

18 THE COURT: The lineup room?

19 THE WITNESS: In the actual lineup room,
20 yes.

21 THE COURT: Yes?

22 THE WITNESS: It was my responsibility to
23 pay the fillers and I asked her are you done and
24 she said yes. Then I left there and it was Detec-
25 tive Newbert and Galligan and I went and got money

1 O'Toole - Defense - Direct

263

2 to pay the fillers for the lineup.

3 THE COURT: You took the fillers out of the
4 room?

5 THE WITNESS: When I got back with the money
6 I took them out of the room and they left the
7 building.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. SEGAL:

10 Q When you got back to the room was Mr. Newton still
11 in the room?

12 A As far as I recall, yes.

13 Q What happened when you got back into the room?

14 A I just took the fillers out because there's a
15 policy in the building you have to escort them downstairs
16 to the door because they don't want them roaming around
17 the building. I took all the fillers out, paid them their
18 money, bought them down to the door.

19 Q What happened with Mr. Newton?

20 A Later when I got back upstairs at that point maybe
21 five minutes elapsed he was in the cell in the back.

22 Q What I'm trying to get at do you leave the room
23 to get the money to pay the fillers and Mr. Newton and the
24 fillers are in the room with Galligan and Newhart?

25 A Right.

1 O'Toole - Defense - Direct

264

2 Q And then you return to the room and a few minutes
3 later; right?

4 A Only takes me about a minute to get the money.

5 THE COURT: When you came back --

6 Q Who --

7 THE COURT: Who was in the room?

8 THE WITNESS: Detective Galligan and Detective
9 Newbert and the five fillers and Mr. Newton.

10 THE COURT: Then you just took the five fillers
11 out?

12 THE WITNESS: That's correct.

13 THE COURT: And when you walked out of that
14 room the two detectives and Mr. Newton were still
15 in the lineup room?

16 THE WITNESS: Yes.

17 Q You came back five minutes later. You next saw
18 Mr. Newton in a cell?

19 A In a cell.

20 Q When you returned and took the fillers out did
21 you hear Galligan or Newbert say anything to Mr. Newton
22 when you were taking the fillers out?

23 A I think Detective Galligan and Newbert they were
24 standing and talking to Mr. Newton I don't know what they
25 said.

1 O'Toole - Defense - Direct

265

2 Q Did you ever hear anybody say to Mr. Newton in
 3 your presence you were identified. You are under arrest
 4 or there may be somebody who looks like you and, you know,
 5 a clone or something like that?

6 A No.

7 Q Never heard that?

8 A Never heard it. I couldn't hear the conversation
 9 they were having. No way if they said it I can't hear it.

10 THE COURT: Let's complete the record. How
 11 much do you pay each filler?

12 THE WITNESS: For that lineup I think we
 13 gave them ten dollars.

14 THE COURT: Five dollars for each lineup?

15 THE WITNESS: Except if we had to make up,
 16 put makeup on them then it is seven dollars.

17 Q At any time, when you were in that room did Mr.
 18 Newton -- withdrawn. Not Mr. Newton, but did anybody of
 19 all the six people who were in the room did any of them
 20 were they told to walk up the mirror and exhibit their mouth?

21 A No.

22 Q Never told that?

23 A No.

24 Q You're sure of that now?

25 A I'm sure. The only thing we told them to get

1 O'Toole - Defense - Direct

266

2 up was to get up and walk two, three, four feet away and
3 give that statement.

4 Q Did you ever talk to Miss [REDACTED] by the way
5 on that day when she came for the lineup?

6 MS. FREUND: Objection.

7 THE COURT: Overruled.

8 A I picked her up at Jacobi Hospital and brought
9 her on over.

10 Q Did you have a discussion with her when you were
11 bringing her over?

12 A No. I told her she was going to the precinct
13 to view a lineup.

14 Q Did you tell her why she had to view a lineup?

15 A No, basically my job is to transport. I picked
16 her up, told her when you get to the precinct you speak
17 with Detective Newbert and you will view a lineup today.

18 Q Did she ask, do you have person, am I going to
19 see anyone in this lineup?

20 A I just told her to relax, sit in the car.

21 Q She didn't ask you why she was coming over?

22 A I told her she was coming over for a lineup.

23 Q I know. Did she say the person who did this
24 is going to be in that lineu?

25 A She didn't ask me that.

1 O'Toole - Defense - Direct

267

2 Q Were you by yourself when you picked her up?

3 A No.

4 Q Who was with you?

5 A Detective Hartfield.

6 Q And did Hartfield say that?

7 A No.

8 Q Nobody said anything about who was going to be
9 in the lineup or what?

10 MS. FREUND: Objection.

11 THE COURT: Overruled. In his presence?

12 THE WITNESS: No.

13 Q Nothing?

14 A Not at all.

15 MR. SEGAL: Nothing further.

16 THE COURT: Was the defendant, Mr. Newton,
17 ever asked separately to repeat that sentence
18 other than in the sequence in which you have
19 given it to us?

20 THE WITNESS: No.

21 THE COURT: In other words there was a viewing
22 then each one went up into the window and repeated
23 the sentence and then each one walked to the
24 door and repeated the sentence?

25 THE WITNESS: First there was the actual

1 O'Toole - Defense - Direct

268

2 viewing and then they were sitting down each
3 one of them.

4 THE COURT: Each one sat down and said the
5 sentence?

6 THE WITNESS: That's right.

7 THE COURT: And each one walked to the viewing
8 room and said the sentence each one walked up
9 to the closed door and closed door and said the
10 sentence to the best of your recollection Mr.
11 Newton was never asked specifically out of turn
12 to repeat that sentence?

13 THE WITNESS: No.

14 THE COURT: And he was never asked to walk
15 to the viewing mirror and exhibit his mouth or
16 his teeth?

17 THE WITNESS: No.

18 THE COURT: Any cross examination?

19 MS. FREUND: No.

20 THE COURT: Officer O'Toole we're delighted
21 you were in the building on another matter and
22 you are excused.

23 Once again tomorrow morning either we will
24 have Miss Gonzalez and proceed with the Wade
25 Hearing or --

1
2 MR. SEGAL: May we approach.

3 THE COURT: Yes.

4 (Whereupon a discussion was held off the
5 record.)

6 (Whereupon the case was adjourned until

7 May 9, 1985.)